

U.S. COURTS

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EHARDT SMITH & TORGESEN

Marty R. Anderson, ISBN 5962

1000 Riverwalk Drive, Suite 175

Idaho Falls, Idaho 83402

Attorneys for the Defendants

Tel. (208) 542-9292 Fax (208) 552-2518

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

HOLM CONSTRUCTION, LLC, an
Idaho Limited Liability Company, in the
name of THE UNITED STATES OF
AMERICA,

Plaintiff,

vs.

DESERT SAGE CONTRACTORS, INC.,
an Idaho Corporation, and
DEVELOPERS SURETY AND
INDEMNITY COMPANY, Surety,

Defendants.

Case No. CV-03-273-E-LMB

MOTION TO SET ASIDE DEFAULT
AND DEFAULT JUDGMENT entered on
March 15, 2004 – Fed.R.Civ.P. 55(c) and
60(b)

COME NOW, the Defendants, DESERT SAGE CONTRACTORS, INC.,
and DEVELOPERS SURETY AND INDEMNITY COMPANY, by and through their
attorneys of record, Marty R. Anderson and the law firm of Ehardt, Smith & Torgesen,

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attorneys of record, Marty R. Anderson and the law firm of Ehardt, Smith & Torgesen, PLLC, and pursuant to Rule 55(c) and Rule 60(b) of the Federal Rules of Civil Procedure, hereby moves the Court for its Order setting aside the Default and Default Judgment on file herein. In support of their Motion, the Defendants allege as follows:

1. The Default and Default Judgment were entered in contravention of the Fed.R.Civ.P. 55(b)(2) because the Defendants were not given notice and an opportunity to respond.

2. The Default and Default Judgment should be set aside for good cause and on the basis of mistake, inadvertence, surprise or excusable neglect pursuant to Fed.R.Civ.P. 60(b)(1). The Defendants have a meritorious defense to the underlying claims and are prepared to defend this matter vigorously.

3. The Default and Default Judgment should be set aside for good cause and on the basis that said Default Judgment is voidable in accordance with Fed.R.Civ.P. 60(b)(6). The Defendants have a meritorious defense to the underlying claims and are prepared to defend this matter vigorously.


4. The Default and Default Judgment should be set aside as the Summons and Complaint were not properly served in accordance with Fed.R.Civ.P. 4(m).

WHEREFORE, the Defendants, DESERT SAGE CONTRACTORS, INC., and DEVELOPERS SURETY AND INDEMNITY COMPANY, respectfully ask that the Court set aside the Default and Default Judgment previously entered herein. In support of MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT entered on March 15, 2004 – Fed.R.Civ.P. 55(c) and 60(b)- 2

this Motion, the Defendants rely upon the Brief in Support of Motion to Set Aside, the Affidavit of Rance Bare and the Affidavit of John Stosich filed herewith. The Defendants request an opportunity to present oral argument and testimony at a hearing before the Court.

DATED this 18th day of August, 2004

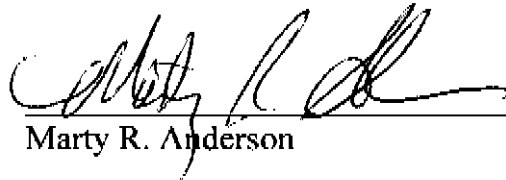
EHARDT SMITH & TORGESEN, PLLC

By 
Marty R. Anderson
Attorneys for Defendants Desert Sage and
Developers

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery, or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 13th day of August, 2004.


Marty R. Anderson

Stephen J. Blaser, Esq.
Blaser, Sorensen & Hansen, Chartered
285 N.W. Main
P.O. Box 1047
Blackfoot, ID 83221

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